

TO: **Mail Stop 8**
Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

REPORT ON THE
FILING OR DETERMINATION OF AN
ACTION REGARDING A PATENT OR
TRADEMARK

In compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court for the District of Maryland on the following

Patents or Trademarks:

| DOCKET NO. | DATE FILED | U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND |
|---|-------------------------------------|--|
| MJG 08-CV-3377 | 12/16/2008 | |
| PLAINTIFF | DEFENDANT | |
| Technical Furniture Group, LLC, Smartdesks, Inc., Thomas White and Marcia Stengel | CBT Supply, Inc. and Jeffrey Korber | |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 7,047,890 | | See attached. |
| 2 D 541,084 | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above-entitled case, the following patent(s)/ trademark(s) have been included:

| DATE INCLUDED | INCLUDED BY | <input type="checkbox"/> Amendment | <input type="checkbox"/> Answer | <input type="checkbox"/> Cross Bill | <input type="checkbox"/> Other Pleading |
|-------------------------|-----------------------------|------------------------------------|---------------------------------|-------------------------------------|---|
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK | | | |
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In the above-entitled case, the following decision has been rendered or judgment issued:

| | |
|-------------------|--|
| DECISION/JUDGMENT | |
|-------------------|--|

| | | |
|-------------------|--------------------|------------|
| CLERK | (BY) DEPUTY CLERK | DATE |
| Felicia C. Cannon | <i>Katie Nader</i> | 12/16/2008 |

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

25. Virtually all "FlipIt" mechanisms sold since have been of the invention as improved with the "Retrofit."

26. After a contentious history involving the Defendants, Peter Stengel incorporated Smartdesks, Inc. as a Maryland corporation on November 16, 2005 and formally ceased doing business with Defendants Korber and CBT Supply on December 7, 2005.

27. On December 29, 2005, Smartdesks, Inc. and Peter Stengel filed a complaint in federal court, case MJG-05-3456, alleging, among other claims, that Defendants CBT Supply and Korber infringed Stengel's trademark and copyrights.

28. On December 29, 2005, Peter Stengel filed a complaint in state court, Case Number 13-C-05-064158, alleging, among other claims, that in 2005, Defendants CBT Supply and Korber breached the contract dated June 6, 2001.

29. Upon Peter J. Stengel's untimely death on February 25, 2006, his business interests were taken over by his widow and Personal Representative, Marcia Stengel.

30. Technical Furniture was founded to manage the business interests in the patents of Peter J. Stengel, Jasen Stengel and Thomas White upon Peter J. Stengel's untimely death due to a long-existing disease. Marcia Stengel is currently the President of Smartdesks, Inc. and Technical Furniture Group.

31. On December 26, 2006, Plaintiff Technical Furniture Group filed a complaint in federal court alleging, among other claims, that the '890 Patent was filed incorrectly with Korber erroneously listed as an inventor, that Korber committed acts of fraud to wrongfully obtain ownership and control of Thomas White's rights to the '890 Patent and committed fraud on the U.S.P.T.O. by having his attorneys use the fraudulent assignment to attempt to obtain ownership and control of the '890 Patent.

32. Since at least December 7, 2005, while the Plaintiffs continue to seek to enforce their exclusive intellectual property rights at the U.S.P.T.O. and in the above ongoing litigation, Defendants have continued to receive millions of dollars in revenues through Defendants' sales of products covered by the Retrofit patent applications and '084 Design Patent, and Defendants' exploitation of and marketing of patent rights associated with such patent rights.

IV. CAUSES OF ACTION

COUNT 1 – FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE: “RETROFIT” PATENT APPLICATION NUMBERS 10/971,571 AND 11/353,833

33. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 32 above.

34. In 2005, Korber improperly attempted to obtain the patent rights to the inventions disclosed in the '890 Patent (at the time the '461 Patent Application) and the '571 Retrofit Patent Application. By August 2005, Korber had caused the relationship with Stengel to deteriorate by refusing to pay moneys due to Peter Stengel and stating that the June 6, 2001 working agreement¹ was over. At this time, Korber became concerned about his rights to continue to use intellectual property responsible for significant revenues. Korber knew that his contribution to the inventions was not as an inventor but as business manager and coordinator. Korber therefore sought to obtain an ownership position in the patents to protect the millions in revenue he received associated with sales of the patented products and launched his plan to force Stengel to sign over all of his intellectual property rights associated with the sales of these products. Initially, Korber

¹ This June 6, 2001 Agreement is discussed and provided in a subsequent section of this Complaint.

attempted to have Peter Stengel assign his patent rights to CBT Supply, but Stengel refused.

35. At Korber's direction, by letter dated July 18, 2005, the Law Offices of Royal Craig sent a demand to Thomas White that White assign his interest in the pending '571 Application to CBT Supply, Inc.

36. The letter dated July 18, 2005 expressly stated that the enclosed assignment document to CBT Supply, Inc. was sent "at the request of Jeff Korber." The letter advised White that "It is our understanding that your contribution to the invention was work-for-hire and this document is necessary to have clear title to the invention." The letter requested that White sign and return the assignment, and that he could call with any questions.

37. At all relevant times, the Law Offices of Royal Craig represented Thomas White and Peter Stengel on the '890 Patent and '571 Patent Application.

38. The demand and associated advice was given without any legal or factual analysis, was clearly erroneous, and was directly against the interests of Thomas White and Peter Stengel, and for the benefit of Jeffrey Korber and CBT Supply. The rights that Defendants sought to fraudulently and/or inequitably obtain by the assignment are worth millions of dollars.

39. The letter from White's own attorney to White constitutes evidence of an affirmative misrepresentation of material facts and fails to disclose the material information that White was being asked to relinquish a valuable right—to which he had a clear claim—to his own detriment.

40. The demand and associated advice was given under Korber's direction with intent to deceive Thomas White. Thomas White responded to Jeffrey Korber and Royal Craig's July 18, 2005 demand that he assign his rights to CBT Supply via a letter dated July 26, 2005. White's July 26, 2005 letter expressly refused to execute the assignment, stating "I have no intention of signing this letter now or in the future. If you have any questions please feel free to contact me at the numbers listed below." Thomas White never received any follow-up call from Royal Craig's offices.

41. Korber subsequently made other attempts to obtain rights to the invention and was unsuccessful.

42. Having failed to accomplish his ends by direct means, Korber resorted to a surreptitious and fraudulent scheme to obtain a document he could file with the Patent Office as a supposed Assignment of White's interests in the "Retrofit" Applications. Korber's scheme was to obtain White's signature on one mostly blank page and attach it to another document assigning White's patent rights to CBT Supply.

43. In November, 2005, Thomas White's business, G.T. Bros., Inc., was a supplier and manufacturer of products that incorporated the patented inventions and dealt directly on such business matters with Korber and CBT Supply.

44. On November 3, 2005, Korber appeared unannounced at White's Baltimore Office of G.T. Brothers after traveling from his home in New Jersey. Korber told White a story about his health worries and his desire that his wife, Lisa Kaslow, be able to continue his business in the event of Korber's death. Korber stated that his wife insisted that he get signed documents from all of their vendors stating that in the event of his

death, they would continue to conduct business with her. Korber stated that they could not continue to do business with any vendor that would not agree to sign this document.

45. White reasonably relied upon Korber's representations.

46. Korber presented White with a three page document wherein the top pages constituted statements related to preserving the business relationship on the contingency of his death and the third and bottom page consisted of a couple lines at the top of the page and then a signature line. Korber then used the top two pages to cover the top lines on the third page above the signature line, which referenced a patent application number, and requested that White sign the document.

47. Because White had to attend an appointment at the time of Korber's unannounced appearance, he hurriedly reviewed the first two pages of the document, a document in which he thought he had little to be concerned. White signed the signature line on the third page.

48. White briefly left his front office to check the shut-down of his factory at the end of the day. Korber then immediately replaced the pages relating to Lisa Kaslow and business contingencies with one page constituting patent assignment terms and faxed the document to the Law Offices of Royal Craig.

49. On February 27, 2006, the document at *Exhibit (1)* was provided by Royal Craig. This "Assignment" document provided by Craig was never recorded at the U.S.P.T.O. by Craig. Defendants never presented or provided this document to the Plaintiffs.

50. Defendants have asserted that *Exhibit (2)* is the "original" assignment to which Defendants claim White's patent rights. The first time the Defendants presented this

document was on November 27, 2007. The “Assignment” document provided in *Exhibit (2)* is a different “Assignment” document than that provided in *Exhibit (1)*.

51. At the time that Korber fraudulently obtained White’s signature and transmitted the document to Patent Counsel Royal Craig, Craig’s co-clients for this Patent matter consisted of Korber, Stengel and White. At no time did Craig attempt to communicate with either Stengel or White concerning the supposed assignment, despite the fact that White had previously expressly stated in writing to Craig that he had no intention, either now or in the future, of assigning his interest in the Application or resulting Patent to Defendants.

52. At all relevant times, Royal Craig, and all subsequent patent counsel, purportedly acting as agent of and at the direction of and/or on behalf of the Defendants, had a duty under the federal patent regulations of “inquiry reasonable under the circumstances” as to the validity of any third party signature before filing any paper with the U.S.P.T.O.. 37 CFR § 1.4(d)(4); 37 CFR § 10.18. Royal Craig and all subsequent patent counsel had a federal duty of determining whether it had a “reasonable belief” that the signature was authentic regarding the purported assignment.

53. Facts on the face of the “Assignment” document and circumstances surrounding the document placed the Royal Craig and successive Patent Attorneys on notice that the assignment was fraudulent.

54. Upon information and belief, Royal Craig recognized that the “assignment” document and circumstances surrounding the creation and appearance of the document demonstrated the likelihood that the document was fraudulent and this was the reason

that Craig never contacted his client White about the assignment or followed the direction of his client Korber to file the document with the U.S.P.T.O..

55. On March 3, 2006, the fraudulent “Assignment” of White’s patent rights was filed with the U.S.P.T.O. by the law office of Seyfarth Shaw on the ‘571 Retrofit Application. This U.S.P.T.O. filing is provided at *Exhibit (3)*. The law office of Seyfarth Shaw is defending Defendants in the case MJG-05-3456.

56. On March 3, 2006, the fraudulent “Assignment” of White’s patent rights was filed with the U.S.P.T.O. by the law office of Seyfarth Shaw on the ‘890 Patent. This claim involving the ‘890 Patent is currently being addressed as Counts I and II in case MJG-08-2639.

57. The “Assignment” document provided in *Exhibit (3)* is a different “Assignment” document than that provided in *Exhibits (1) and (2)*.

58. The Seyfarth Shaw attorney(s) who filed the assignment with the U.S.P.T.O. never made any inquiry to Thomas White about the purported authenticity of the “Assignment” or attempted to communicate with him in any way regarding this document before filing this document with the U.S.P.T.O. on the ‘571 Application.

59. At the time the fraudulent “assignment” document was filed on the ‘571 Retrofit Application, it was stale according to U.S.P.T.O. rules by over one (1) month.

60. On September 22, 2006, the fraudulent “Assignment” of White’s patent rights was filed with the U.S.P.T.O. by the law office Whiteford Taylor on the ‘833 Retrofit Application. This U.S.P.T.O. filing is provided at *Exhibit (4)*.

61. On June 25, 2007, the fraudulent “Assignment” of White’s patent rights was filed with the U.S.P.T.O. as a “Corrective Assignment” by the law office Whiteford Taylor on

the '833 Retrofit Application. This U.S.P.T.O. filing is provided at *Exhibit (5)*. The law office of Whiteford Taylor is defending Defendants in the cases MJG-06-3424 and MJG-08-2639.

62. The "Assignment" document provided in *Exhibits (4) and (5)* is a different "Assignment" document than that provided in *Exhibits (1) and (2)*.

63. The Whiteford Taylor attorney(s) who filed the assignment with the U.S.P.T.O. never made any inquiry to Thomas White about the purported authenticity of the "Assignment" or attempted to communicate with him in any way regarding this document before filing this document with the U.S.P.T.O. on the '833 Application.

64. At the time the fraudulent "assignment" document was filed on the '833 Retrofit Application, it was stale according to U.S.P.T.O. rules by over seven (7) months.

65. Currently, the U.S.P.T.O. lists CBT Supply as owning White's rights to the '571 and '833 Retrofit Patent Applications by the filing of the fraudulent "assignment" document.

66. In a decision of the U.S.P.T.O. concerning the '571 patent application, see *Exhibit (6)*, the U.S.P.T.O. reported that:

Inspection of USPTO assignment records reveals that at real 17249, frame 401, the USPTO recorded on March 3, 2006, White's assignment of this application to CBT Supply Inc., executed November 3, 2005. The USPTO has also recorded at real frame 19847, frame 858 on June 25, 2007, a document styled as a corrective assignment of White's interest in this application to CBT Supply Inc. D/B/A Smart Desks, likewise executed November 3, 2005, in addition to the assignment executed January 9, 2007 to TFG.

The USPTO has a long established policy for such situations. It is well settled that the USPTO will not undertake to settle disputes between conflicting assignees, but will leave this to the courts of competent jurisdiction.

....

Where, as here, there are conflicting assignments of an application, the first assignee, if he intervenes, will be recognized by the USPTO to prosecute the application until his assignment is set aside by either mutual agreement, or by a decision of a competent court.

67. Based on the November 3, 2005 date of the fraudulent “assignment”, and there yet being no court intervention, the U.S.P.T.O. recognized that “The earliest executed instrument that transfers White’s rights title and interest herein is dated November 3, 2005, and conveys title to CBT Supply, Inc.” *Exhibit (6)*. Thus, Defendants obtained ownership of White’s rights to the ‘571 application and transferred control of White’s rights to Defendants’ attorneys, the law firm of Whiteford Taylor.

68. In a decision of the U.S.P.T.O. concerning the ‘833 patent application, see *Exhibit (7)*, the U.S.P.T.O. reported that “On November 9, 2006, third party CBT Supply, Inc. (hereinafter “CBT”) filed a petition, asserting to be the assignee of inventor White, in view of an assignment allegedly executed on November 3, 2005, and recorded on September 22, 2006.” In their filings at the U.S.P.T.O., Defendants used the fraudulent “assignment” as grounds to petition the U.S.P.T.O. to revoke Plaintiffs’ power of attorney in the ‘833 Patent Application, and assign Whiteford Taylor as the attorneys of record, in an attempt to control the ‘833 application and obtain ownership rights to it. The U.S.P.T.O. subsequently denied the Defendants’ petition on September 12, 2007, but the Defendants requested that the U.S.P.T.O. reconsider and revise its decision, again asserting ownership of White’s inventorship rights. *Exhibit (7)*. On March 12, 2008, the U.S.P.T.O. again denied Defendants’ petition to reconsider and revise its decision, explaining that “the U.S.P.T.O. was not the forum for resolving disputes as to inventorship or ownership.” *Exhibit (7)*.

69. Defendants have made statements to third parties that they own the rights to the Retrofit patent applications due to the fraudulent White “assignment.”

70. As of October 29, 2008, Defendants continued to assert ownership of White’s rights by the fraudulent “assignment” to the Retrofit patent applications to the U.S.P.T.O. and to third parties and refused to file the necessary documents at the U.S.P.T.O. to remove and set aside the fraudulent assignment filings from the record.

71. Defendants have a duty to not submit fraudulent docs to the U.S.P.T.O..

72. After receiving evidence that such a document is fraudulent, Defendants had a duty to not continue to represent that it was valid before the U.S.P.T.O. or to continue to assert that the document granted ownership and control rights to Defendants.

73. By submitting such documents to the U.S.P.T.O. and making false statements, Defendants intended to deceive the U.S.P.T.O..

74. The foregoing material acts and misrepresentations were made with intent to deceive, defraud and mislead the U.S.P.T.O.

75. The procurement, substitutions, misrepresentations and filings constitute affirmative material misrepresentations of fact, and failures to disclose material information.

76. Defendants’ conduct constitutes inequitable conduct.

77. Korber’s conduct on behalf of himself and CBT Supply constitutes fraud on the U.S.P.T.O.

78. The fraudulent misrepresentation as to ownership of White’s patent ownership rights in public filings at the U.S.P.T.O. is likely to mislead potential licensors, purchasers and/or customers, and lead to the loss of potential royalties, fees and sales.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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TECHNICAL FURNITURE GROUP, LLC :
10717 Faulkner Ridge Circle :
Columbia, MD 21044, and :
SMARTDESKS, INC. : CIVIL ACTION NO.: MJG-08- 3377
10717 Faulkner Ridge Circle :
Columbia, MD 21044, and :
THOMAS WHITE, individually :
5736 Greenville Road :
Sykesville, MD 21784, and :
MARCIA STENGEL, Personal Representative :
Of the Estate of Peter J. Stengel :
10717 Faulkner Ridge Circle :
Columbia, MD 21044, :
Plaintiffs, :
v. :
CBT SUPPLY, INC. :
514 F. Progress Drive :
Linthicum, MD 21090, :
Serve on Resident Agent: :
The Corporation Trust, Inc. :
300 E. Lombard St. :
Baltimore, MD 21202, and :
JEFFREY KORBER, individually :
83 Jacobs Road :
Rockaway, NJ 07866, and :
Defendants. :
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COMPLAINT

Plaintiffs, TECHNICAL FURNITURE GROUP, LLC, (hereafter "Technical Furniture"), SMARTDESKS, INC., THOMAS WHITE ("White"), and MARCIA

79. The Defendants had an objective in filing the fraudulent documents at the U.S.P.T.O. and their continued assertion of ownership and control of White's patent rights, to which objective they expended large sums of attorneys' fees and costs. Their objective was to mislead and confuse the U.S.P.T.O. and the public, to support their business interests in competition with the Plaintiffs, and to harm the Plaintiffs.

80. As a result of Defendants' filings before the U.S.P.T.O., Plaintiffs lost and/or delayed their ability to control the prosecution of their own patent applications, significantly increased the legal costs related to the obtaining patent protection, and significantly delayed the issuance of the patent by the U.S.P.T.O.. The delay in issuing the patent has correspondingly delayed the right to enforce the patent against third parties and Defendants and has prevented and/or delayed the Plaintiffs' ability to license the patent and obtain royalties and fees from Defendants and third parties.

81. As a result of Korber's fraudulent scheme, the "Assignment" to CBT should be declared null and void and all uses by the Defendants to file and record the "Assignment" with the U.S.P.T.O. also be declared null and void. The Commissioner of Patents should be directed to remove and set aside the fraudulent "Assignment" from the files of the '571 Patent Application and the '833 Patent Application and the on-line listing on the www.uspto.gov web page.

82. As a direct and proximate result of Defendants' fraud on the U.S.P.T.O., Plaintiffs have suffered damage, including but not limited to the loss of their exclusive rights under the subject patent applications, unfair competition, financial loss, and attorneys' fees.

COUNT 2 – FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE:
PATENT NUMBER D541,084 AND APPLICATION NUMBER 29/253,938

83. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 82 above.

84. Defendants' story that they recently "discovered" the false document demonstrates that Defendants know that the document is unreliable and questionable on its face. At the time of the trial on inventorship, Korber knew that his contribution to the invention described in the '084 Design Patent was not as an inventor but as business administrator and coordinator. Korber further knew that he had no corroborating evidence to demonstrate that he was an inventor and was concerned with the trial in which he was to testify and provide evidence scheduled for July 23, 2008. On July 10, 2008, less than two weeks prior to the trial, Korber submitted a false document to try to invalidate the patent of which he had previously claimed he was an inventor and owner. The false documents are emails dated November 3, 2003 as provided at *Exhibit (8)*. These documents were provided and filed with the federal court in case MJG-06-3456 on July 17, 2008—one week prior to trial that would address Defendants' ownership rights—as provided at *Exhibit (9)*.

85. On August 29, 2008, Defendants submitted the false document labeled "Korber Exhibit 1004" to the U.S.P.T.O. to also attempt to invalidate the '084 Patent during the Interference proceeding as provided at *Exhibit (10)*. On the same day, Defendants submitted a false affidavit signed under oath by Korber labeled "Korber Exhibit 1003" to the U.S.P.T.O. as provided at *Exhibit (11)*.

86. To invalidate the '084 Design Patent, Defendants claim that the design disclosed in the '868 Patent Application filed on November 24, 2004 was offered for sale more

than one year prior to the filing. Korber knew that the design disclosed in the '084 Design Patent was significantly different than the initial design concept of early November 2003 and that the design had in fact undergone a significant redesign in December 2003 and afterwards. Thus Korber created the documents provided to the U.S.P.T.O. at *Exhibit (10)* by, apparently, cutting and pasting electronic pictures and performing other electronic manipulation.

87. The email press release provided by Defendants could not have existed on November 3, 2003. The picture displayed, which purports to be the picture in an email sent from Peter Stengel, was not created until March 17, 2004, and was created to be used for a press release for the 2004 FOSE Show on March 23, 2004. *Exhibit (10)* and the related exhibits are clearly fraudulent.

88. *Exhibit (10)* and the related exhibits have purportedly been in the possession and control of Defendants since its creation, which the Korber affidavit at *Exhibit (11)* states occurred on November 3, 2003.

89. Thus, five years after Korber states that *Exhibit (10)* was created and sent out by email, four years after the design patent application was filed on November 24, 2004, more than two years after the parties officially initiated a dispute over the inventorship of the '084 Design Patent, no person challenged the validity or enforceability of the patent. During the extensive discovery process completed between the parties, the answers to interrogatories signed by Korber under oath never alleged any defense as to the validity of the '084 patent or provided any information at all calling the patent into question in any way. In the production of millions of documents by Stengel, Korber and White, at no time did Party Korber ever challenge or question the validity or enforceability of the

patent. And during that time, the fraudulent email and press release documents were never produced by any party.

90. Defendants have a duty to not submit fraudulent docs to the U.S.P.T.O..

91. Defendants have a duty to not submit a false affidavit to the U.S.P.T.O..

92. After receiving evidence that such a document is fraudulent, Defendants had a duty to not continue to represent that it was valid before the U.S.P.T.O..

93. After receiving evidence that such a document is fraudulent, Defendants had a duty to withdraw the document from the U.S.P.T.O. and correct the record at the U.S.P.T.O..

94. By submitting such documents to the U.S.P.T.O. and making false statements, Defendants intended to deceive the U.S.P.T.O..

95. The foregoing material acts and misrepresentations were made with intent to deceive, defraud and mislead the U.S.P.T.O..

96. The procurement, substitutions, misrepresentations and filings constitute affirmative material misrepresentations of fact, and failures to disclose material information.

97. Defendants' conduct constitutes inequitable conduct.

98. Korber's conduct on behalf of himself and CBT Supply constitutes fraud on the U.S.P.T.O..

99. The Defendants' misrepresentations, false affidavit and fraudulent document submitted in public filings to the U.S.P.T.O. providing "evidence" that the Plaintiffs' patent is invalid and unenforceable is likely to mislead potential licensors, purchasers and/or customers, and lead to the loss of potential royalties, fees and sales.

100. The Defendants had an objective in filing the fraudulent documents at the U.S.P.T.O. and continued assertion of the invalidity and unenforceability of Plaintiffs' patent rights, to which objective they expended large sums of attorneys' fees and costs. Their objective was to mislead and confuse the U.S.P.T.O. and the public, to support their business interests in competition with the Plaintiffs, and to harm the Plaintiffs.

101. As a result of Defendants' filings before the U.S.P.T.O., the Plaintiffs had to pay significantly increased legal costs related to maintaining the validity and enforceability of the patent, while the issues of the patent has been delayed by the U.S.P.T.O.. The delay in issuing the patent has correspondingly delayed the right to enforce the patent against third parties and Defendants and prevented or delayed the Plaintiffs' ability to license the patent and obtain royalties and fees from Defendants and third parties.

102. As a result of Korber's fraud, all versions of the email press release should be declared null and void, all uses by the Defendants to file with the U.S.P.T.O. also be declared null and void, and Korber's affidavit should be withdrawn with the basis for such withdrawal made on the record.

103. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to the loss of enforceability of the patent and related patent rights, future attorneys' fees, the likelihood of increased litigation expenses, unfair competition, financial loss, and attorneys' fees.

COUNT 3 — BREACH OF FIDUCIARY DUTY

104. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 103 above.

105. As originally agreed between the parties when they began their business relationship on or about December 1997, Korber was to administer certain customer, production and financial matters. This relationship continued under the business Agreement of June 6, 2001. The business Agreement of June 6, 2001 included a profit sharing and business sale agreement in return for the licenses provided by Stengel.

106. The June 6, 2001 Agreement addressing profit sharing related to CBT Supply is provided at *Exhibit (12)*.

107. CBT Supply was a licensee of Stengel's SMARTDESKS word and design (logo) marks, copyrights related to design drawings and a website, and other forms of Stengel's intellectual property under the June 6, 2001 profit sharing agreement and in accordance with their business relationship. Under this Agreement, Defendants paid Stengel what they stated was Stengel's share of the gross profits through the time period December 31, 2004. Subsequent to the signing of the Agreement between the parties, Defendants received a larger share of gross profits (for reasons discussed in a subsequent section) than originally contemplated by the parties in the June 6, 2001 Agreement.

108. Under the parties' business relationship, the parties each received extensive confidential information. Korber provided information to Stengel regarding his extensive previous business failures, financial difficulties, marital woes that affected the business, and other problems. Stengel provided Korber with his SMARTdesks business plans, product development plans, trade secrets and other plans and information regarding Stengel's intellectual property.

109. Under the Agreement and in the business relationship between the parties, in which Defendants were due to pay Stengel "gross profits" from the intellectual property

licenses that Stengel provided, and in which Defendants received the additional benefit of receiving larger gross profits from Stengel's product lines that were not originally intended to be part of the CBT Supply portion of the Agreement, and wherein the parties shared extensive confidential information, Korber and CBT Supply were accountable to Stengel as a fiduciary.

110. In acting as a fiduciary, administering Stengel's intellectual property under the license, managing the revenues resulting from Stengel's intellectual property, and in having knowledge of Stengel's confidential business plans, trade secrets and information, Defendants owed Stengel a duty to act for the benefit of Stengel and his intellectual property with loyalty and good faith, and without self-interest or self dealing.

111. As a fiduciary, Defendants represented to Stengel that their books and accounting records were complete, truthful and accurate and in accordance with generally accepted accounting principles.

112. As a fiduciary under the parties' Agreement, Defendants represented to Stengel that the payments made to him from the beginning of the parties Agreement in June 2001 through the December 31, 2004 time period were based upon truthful and accurate calculations of gross profits and payments due Stengel under the Agreement.

113. Defendants breached their fiduciary duty by misrepresenting to Stengel that their books and accounting records were complete, truthful and accurate and in accordance with generally accepted accounting principles.

114. Defendants breached their fiduciary duty by misrepresenting to Stengel that the payments made to him from the beginning of the parties Agreement in June 2001 through

the December 31, 2004 time period were based upon truthful and accurate calculations of gross profits and payments due Stengel under the Agreement.

115. Defendants breached their fiduciary duty by misrepresenting to Stengel that they desired to continue working under the June 6, 2001 profit sharing agreement past December 31, 2004.

116. Defendants breached their fiduciary duty by misrepresenting to Stengel that Defendants would continue to license Stengel's intellectual property and pay Stengel reasonable royalties beyond December 31, 2004.

117. Defendants breached their fiduciary duty by misrepresenting to Stengel that Defendants could be entrusted to maintain and use Plaintiffs' intellectual property and trade secrets while not usurping possession and control without Stengel's permission.

118. Defendants breached their fiduciary duty by misrepresenting to Stengel that if Defendants did not obtain a license from Stengel for his intellectual property or otherwise agree to a successor agreement to the June 6, 2001 Agreement, that Defendants would cease using Stengel's intellectual property.

119. Defendants breached their fiduciary duty by misrepresenting to Stengel that if Defendants did not obtain a license from Stengel for his intellectual property or otherwise agree to a successor agreement to the June 6, 2001 Agreement, that Defendants would return to Stengel control and possession of all of his assets.

120. Stengel reasonably relied on Defendants' fiduciary duty to act in Stengel's interests with regard to an accounting of payments due under the June 6, 2001 Agreement, Defendants' duty to act in trust with regard to Stengel's intellectual property and trade secrets, and Defendants' duty that the end of the parties' business arrangement

would result in the return to Stengel of all possession and control over his intellectual property and trade secrets.

121. Defendants breached all of their foregoing fiduciary duties.
122. Defendants further breached their fiduciary duties to Stengel as discussed in the subsequent sections, and all allegations in this Complaint are incorporated in this section as if fully set forth herein.
123. Had Stengel discovered any of these breaches of Defendants' fiduciary duty, Stengel would not have continued the business relationship with Defendants beyond such time as the breach.
124. As a direct and proximate result of Defendants' breach of their fiduciary duty to Plaintiffs, Plaintiffs suffered extensive damages.

COUNT 4 — FRAUD – FINANCIAL AND LICENSE

125. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 124 above.
126. As discussed above, CBT Supply was a licensee of Stengel's intellectual property under their business relationship in the profit sharing agreement of June 6, 2001 provided at *Exhibit (12)*, which provided that "Stengel will be paid a percentage of the annual gross profits of CBT Supply . . ." Under the Agreement, the payments were to be made "within sixty (60) days" of the calculation of the gross profits "as of the 30th of June and the 31st of December of each year".
127. Gross profit is the difference between revenue and the cost of making the products and providing the installation services, before deducting such expenses as overhead, marketing, payroll, taxation, and interest payments.

128. As the business was a virtual business, and the parties did not themselves own any manufacturing facilities or perform any manufacturing, all manufacturing costs and most installation costs were subcontracted to third parties. Thus the gross profit calculation was intended to be the revenues received subtracting the invoiced amount paid to the third parties for product manufacturing and installation.

129. Under the Agreement, Korber had a duty to provide an accounting of all finances related to the sales and the gross profits calculation.

130. Until the Agreement ended, Korber actually simply provided a figure representing the total amount owed and a sales figure that he stated represented the sales in the applicable time period.

131. Since the date of the June 6, 2001 Agreement until the end of 2004 time period, Defendants provided a check to Peter Stengel which they stated represented the due portion of Stengel's "gross profits" for that time period under the Agreement.

132. Stengel reasonably relied upon Defendants not misrepresenting financial and accounting facts to Stengel, not fraudulently manipulating their books and accounting records, and in not breaching the fiduciary duty owed to Stengel.

133. The time period to December 31, 2004, was the last check received by Stengel representing the gross profits.

134. Stengel was never paid by Defendants for his share of the profits due on June 30, 2005 and December 31, 2005.

135. For some new product sales utilizing Stengel's intellectual property after the time period of December 2004 (the time period that Defendants last paid Stengel his portion of the gross profits), Stengel received no payments of gross profits at all from Defendants.

STENGEL, by and through their undersigned attorneys Conwell, LLC., sue CBT SUPPLY, INC. (hereinafter "CBT" or "Defendant CBT"), and JEFFREY KORBER (hereinafter "Korber" or "Defendant Korber") (collectively, hereinafter "Defendants") for Defendants' fraud on the United States Patent and Trademark Office associated with the "Retrofit" patent applications 10/971,571 and 11/353,833, the D541,084 Design Patent and related 29/253,938 application, Defendants' fraud and misrepresentation related to their books, records and accounting associated with their licensing and business use of Stengel's intellectual property, Defendants' breach of their fiduciary duty owed to Plaintiffs, and Defendants' breach of contract and unjust enrichment related to the parties' working agreement dated June 6, 2001, and further state:

i. **Summary of Claims**

Count 1 — Fraud on the U.S.P.T.O. — "Retrofit" Patent Applications '571 and '833
Count 2 — Fraud on the U.S.P.T.O. — Design Patent '084 and Application '938
Count 3 — Breach Of Fiduciary Duty
Count 4 — Fraud — Financial and License
Count 5 — Constructive Fraud — Financial and License
Count 6 — Negligent Misrepresentation
Count 7 — Breach Of Contract
Count 8 — Promissory Estoppel and Detrimental Reliance
Count 9 — Quantum Meruit
Count 10 — Unjust Enrichment
Count 11 — Accounting

I. JURISDICTION, VENUE AND RELATED CASES

1. This is a civil action having claims related to case MJG-06-3424, originally filed on December 26, 2006, authorized under 35 U.S.C. § 256, which sought to correct inventorship of the United States Patent No. 7,047,890 (hereafter the "890 Patent") and United States Patent No. D541,084 (hereafter the "084 Design Patent") and which formerly presented Claim III for Fraud related to a false patent assignment document

136. After this Agreement was signed, additional product lines were administered under this CBT Supply portion of the Agreement that were not originally intended. Instead, these product lines were intended to be administered under another portion of the June 6, 2001 Agreement, provided at ***Exhibit (13)***, under Peter Stengel's entity Niche Direct.

137. The respective CBT Supply and Niche Direct portions of the Agreement mirrored each other. Under the portion of the Agreement administered by CBT Supply, Stengel was to be paid up to seventeen and one half percent (17 ½ %) of the gross profits, with the remaining eighty two and one half percent (82 ½%) of the gross profits for Korber's company CBT Supply. Under the portion of the Agreement administered by Niche Direct, Korber was to be paid up to seventeen and one half percent (17 ½ %) of the gross profits, with the remaining eighty two and one half percent (82 ½%) of the gross profits for Stengel's entity Niche Direct. Thus, for products administered in the CBT Supply portion that were originally intended for the Niche Direct, Korber received sixty five percent (65%) more of the gross profits than originally intended by the parties.

138. Each year since Stengel started doing business under the SMARTDESKS marks in 1996, the revenues and gross profits associated with the SMARTDESKS marks and Stengel's increasing intellectual property assets grew enormously.

139. By the end of July 2005, when CBT Supply's biannual gross profits statement representing the time period to June 30, 2005 became due, business had greatly increased and substantial gross profits were due to be paid to Stengel by Defendants. By August, when Peter had still not received a statement of gross profits, he became concerned. Korber then requested that they meet on or about August 17, 2005. At that meeting,

Korber told Stengel that their profit sharing Agreement had expired at the end of 2004 and that he would not be paying Stengel his percentage of profits for 2005 and handed a letter to Stengel stating as such. *Exhibit (14)*(Korber letter of August 17, 2005). Korber instead stated that the only way he would pay Stengel is for Stengel to assign to Defendants all of his intellectual property rights, including SMARTDESKS and the patents, pursuant to an agreement that he handed Stengel. *Exhibit (15)*("Independent Contractor Agreement" of August 17, 2005).

140. Following this meeting, Stengel retained his own independent counsel who negotiated with Defendants. During those negotiations, Defendants stated that the only way they would pay Stengel is for Stengel to assign to Defendants all of his intellectual property rights, including SMARTDESKS trademarks and the patents. *Exhibit (16)*(October 26, 2005 fax from Robert J. Thieblot and "Independent Contractor Agreement"). Stengel refused.

141. Defendants planned and undertook a course of action to defraud Stengel out of his percentage share of the annual gross business profits, his share of the joint business venture and the share of profits upon the anticipated sale of the business.

142. After December 7, 2005, Plaintiffs reasonably anticipated that negotiations had ended, that Defendants had no intention of paying Plaintiffs under the Agreement, and that Defendants were attempting to steal Plaintiffs' intellectual property.

143. Since at least July 30, 2005, Defendants have kept one hundred percent (100%) of the gross profits from sales of products utilizing Plaintiffs' intellectual property, excluded Plaintiff from all profits of any kind, and utilized the millions of dollars of profits to finance litigation against Plaintiffs to maintain their unlawful actions and keep the profits

they obtained from their ill-gotten exploitation of Plaintiffs' property. The profits kept by Defendants even include those associated with products not originally intended to be administered under the CBT Supply portion of the Agreement.

144. Litigation commenced on then-known intellectual property and contract and related issues on December 29, 2005.

145. During the discovery process for the extensive litigation that would follow, in early 2007, the Defendants eventually turned over an initial set of their books and records, namely some federal tax return documents. In these documents, for the first time, Defendants received evidence that Defendants had been defrauding Stengel through the years under their Agreement. More detailed discovery, including receipt of some financial records kept in Defendants' Quick Books accounting program, and depositions of Defendants, including Korber and CBT Supply's "accountant", Charlotte Howard, further demonstrated that Defendants had been defrauding Stengel under the Agreement.

146. The extensive fraud discovered in early 2007 included Defendants' calculation of gross profits that included all of Defendants' costs, including CBT Supply's overhead, Korber's and his wife Lisa Kaslow's personal expenses, and even expenses paid to Stengel to reimburse him and for other additional services provided by Stengel.

147. Defendants knew they had defrauded Stengel and sought to keep Plaintiffs from discovering their theft.

148. Defendants' acts of fraud have cost Plaintiffs millions of dollars.

149. Had Stengel discovered any of this fraud, he would not have continued the business relationship with Defendants beyond the discovery of such fraud.

150. The foregoing material acts and misrepresentations were made with intent to deceive and defraud Stengel.

151. Korber's conduct on behalf of himself and CBT Supply constitutes fraud.

152. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to loss of profits due to Stengel, loss of sales and profits due to having to rebuild the foundation of the Smartdesks business, unfair competition as customers who purchased Smartdesks products from the unlawful competitor, unfair competition as Defendants disparaged Plaintiffs to the public and third parties, unfair competition as Defendants have fraudulently exploited Stengel's intellectual property rights with vendors and manufacturers, loss of goodwill as Defendants have intentionally harmed customer relationships and invoked the threats and concerns of litigation, unfair competition through loss of brand and product exclusivity, financial loss and attorneys' fees.

COUNT 5 — CONSTRUCTIVE FRAUD – FINANCIAL AND LICENSE

153. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 152 above.

154. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that their books and accounting records were complete, truthful and accurate and in accordance with generally accepted accounting principles.

155. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that the payments made to him from the beginning of the parties Agreement in June 2001 through the December 31, 2004 time

period were based upon truthful and accurate calculations of gross profits and payments due Stengel under the Agreement.

156. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that they desired to continue working under the June 6, 2001 profit sharing agreement past the December 31, 2004.

157. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that Defendants would continue to license Stengel's intellectual property and pay Stengel reasonable royalties beyond December 31, 2004.

158. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that Defendants could be entrusted to maintain and use Plaintiffs' intellectual property and trade secrets while not usurping possession and control without Stengel's permission.

159. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that if Defendants did not obtain a license from Stengel for his intellectual property or otherwise agree to a successor agreement to the June 6, 2001 Agreement, that Defendants would cease using Stengel's intellectual property.

160. Defendants breached their fiduciary duty intentionally, with malice, and/or with reckless disregard by misrepresenting to Stengel that if Defendants did not obtain a license from Stengel for his intellectual property or otherwise agree to a successor agreement to the June 6, 2001 Agreement, that Defendants would return to Stengel control and possession of all of his assets.

161. Stengel reasonably relied on Defendants' fiduciary duty to act in Stengel's interests with regard to an accounting of payments due under the June 6, 2001 Agreement, Defendants' duty to act in trust with regard to Stengel's intellectual property and trade secrets, and Defendants' duty that the end of the parties' business arrangement would result in the return to Stengel of all possession and control over his intellectual property and trade secrets.

162. Defendants breached all of their foregoing duties.

163. Defendants' conduct constitutes constructive fraud.

164. The misrepresentations and breaches stated herein have cost Plaintiffs millions of dollars.

165. Had Stengel discovered any of these misrepresentations and breaches, he would not have continued the business relationship with Defendants beyond such time as the misrepresentation and/or breach.

166. As a direct and proximate result of Defendants' constructive fraud, Plaintiffs have suffered damage, including but not limited to loss of profits due to Stengel, loss of sales and profits due to having to rebuild the foundation of the Smartdesks business, unfair competition as customers who purchased Smartdesks products from the unlawful competitor, unfair competition as Defendants disparaged Plaintiffs to the public and third parties, unfair competition as Defendants have fraudulently exploited Stengel's intellectual property rights with vendors and manufacturers, loss of goodwill as Defendants have intentionally harmed customer relationships and invoked the threats and concerns of litigation, unfair competition through loss of brand and product exclusivity, financial loss and attorneys' fees.

COUNT 6 — NEGLIGENT MISREPRESENTATION

167. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 166 above.

168. The foregoing conduct of Korber and CBT Supply as herein alleged constitutes Defendants' making misrepresentations of past or present material facts, failure to disclose past or present material facts and/or concealment of past or present material facts, conduct which Defendants had a duty not to engage.

169. The foregoing conduct of Korber and CBT Supply as herein alleged constitutes a breach of the duty owed by Defendants to Plaintiffs to not fail to make full and complete disclosure to the Plaintiffs of past or present material facts so as to create a false impression of the actual facts, and not to conceal past or present material facts for purposes of having Plaintiffs act in a manner which would be inconsistent with their expected course of conduct had they been aware of past or present material facts, the existence of which had been concealed.

170. Plaintiffs acted and/or refrained from acting in reliance upon the assumed integrity of Defendants, the fiduciary owed to Plaintiffs by Defendants, and the integrity and completeness of the financial books and records as completed and maintained by Defendants, including inside and outside accounting professionals.

171. Plaintiffs were justified in relying on the integrity of Defendants, the fiduciary owed to Plaintiffs by Defendants, and the integrity and completeness of the financial books and records as completed and maintained by Defendants, including inside and outside accounting professionals.

172. As a direct and proximate result of Defendants' aforesaid negligent misrepresentation, concealment and non-disclosure, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

COUNT 7 — BREACH OF CONTRACT

173. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 172 above.

174. Defendants materially breached the June 6, 2001 Agreement by not paying Plaintiffs for any gross profits due during the 2005 time period.

175. Defendants materially breached the June 6, 2001 Agreement by secretly improperly manipulating their calculation of the "gross profits" due by withholding millions of dollars due Stengel by improperly deducting CBT Supply's overhead, Korber's and his wife Lisa Kaslow's personal expenses, and even expenses paid to Stengel to reimburse him and for other additional services provided by Stengel, from the revenues received. These secret deductions were first discovered in early 2007 with the Defendants' production of some financial tax documents.

176. In reliance on accurate payment of gross profits under the Agreement, Stengel passed up numerous other business opportunities, including using his intellectual property for his own exclusive use.

177. As a direct and proximate result of Defendants' aforesaid material breaches of contract, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

COUNT 8 — PROMISSORY ESTOPPEL AND DETRIMENTAL RELIANCE

178. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 177 above.

179. Defendant Korber waited until August 17, 2005 to inform Stengel that he did not intend to pay him under the Agreement for “gross profits” earned since January 1, 2005.

180. Defendants negotiated in bad faith by demanding that Stengel sign away all of his intellectual property rights as a condition for payment, and waited until December 2005 to inform Stengel that they did not intend to pay Stengel for royalties owed to Stengel and that they never intended to return possession and control of Stengel’s intellectual property to him.

181. Stengel reasonably relied on expectation of payment under the Agreement for extensive sales and revenues that he had knowledge had accrued in that time period.

182. Stengel reasonably relied on Defendants not breaching their fiduciary duty due Stengel and not committing fraud against him.

183. Stengel reasonably relied that Defendants would return possession and control of Stengel’s intellectual property to him.

184. As a direct and proximate result of Defendants’ failures to make payments of the gross profits, Defendants’ failure to negotiate in good faith, and Defendants’ failure to return possession and control of Stengel’s intellectual property to him, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

COUNT 9 — QUANTUM MERUIT

185. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 184 above.

186. Stengel rendered valuable intellectual property rights and provided other services to Defendants with the intention of receiving from Defendants his due portion of the gross profits from sales. Defendants were aware that Stengel expected to be paid for such rights and services. Defendants were aware that Stengel assumed and relied on the fact that Defendants would cease using Stengel's intellectual property if the June 6, 2001 Agreement was terminated and the parties did not otherwise sign another agreement.

187. The rights and services conferred by Stengel on the Defendants were accepted, used and enjoyed by the Defendants.

188. As a result of Defendants' refusal to pay for the rights and services conferred by the Plaintiff, the Plaintiff has suffered extensive damages.

COUNT 10 — UNJUST ENRICHMENT

189. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 188 above.

190. The services and rights conferred by the Plaintiff on the Defendants were of great benefit to the Defendants, entirely responsible for the Defendants' receipt of large sales and profits, and provided with the Defendants' knowledge.

191. It would be inequitable for Defendants to retain the benefits of the rights and services conferred upon them without payment of their fair value.

COUNT 11 — ACCOUNTING

192. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 191 above.

193. Defendants have been in exclusive control of the financial records associated with sales and profit calculations under the June 6, 2001 agreement and with all sales

related to the '890 Patent and Claim IV requesting declaratory relief for filing that false patent assignment document with the U.S.P.T.O. on the '890 Patent. Counts III and IV in MJG-06-3424 were transferred to case MJG-08-2639. MJG-08-2639 has been stayed pending a request by any of the parties or the decision of the appellate court.

2. This is a civil action having claims related to case MJG-05-3456, originally filed on December 29, 2005, authorized under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.*, 28 U.S.C. §§ 1331 (federal question), 28 U.S.C. 1338 (a) (copyrights and trademarks), 28 U.S.C. 1338(b)(unfair competition related to claims of copyright and trademark), 15 U.S.C. § 1125(d)(cyberpiracy), and false designation of origin pursuant to 15 U.S.C. § 1125. In this federal litigation, Defendants also filed one or more fraudulent documents in an attempt to obtain rights to the Plaintiffs' intellectual property. This federal case was consolidated for discovery with MJG-06-3424.

3. This Court has original jurisdiction under 28 U.S.C. §1338 (patents, copyrights, trademarks, unfair competition).

4. Any claims related to ongoing cases MJG-05-3456, MJG-06-3424, MJG-08-2639 are entitled to equitable tolling of any statute of limitations as the parties and facts are identical and the claims related.

5. This Complaint presents the fraud associated with Defendant Korber's scheme to create and file a fraudulent document with the United States Patent and Trademark Office ("U.S.P.T.O.") on the 10/971,571 ("571 Application") and 11/353,833 ("833 Application") patent applications, to control those patent applications and assert ownership of those patent applications and associated patent rights.

associated with any of the intellectual property described in this complaint and the related federal complaints.

194. The Plaintiffs are fearful that the electronic documents have been manipulated and the books and records altered and that multiple sets of books have been kept, all actions consistent with the electronic document alterations and fraudulent actions taken by the Defendants as described in this complaint.

195. The rights and obligations described above and duties owed to the Plaintiffs by the Defendants, in combination with the extensive fraudulent actions undertaken by the Defendants, confer an obligation on the part of the Defendants to perform an independent and audit able financial report at the expense of the Defendants accounting for all sales, revenues, and profits related to any party or asset described in this complaint or the related federal complaints.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a Judgment:

- A. Awarding Plaintiff compensatory damages in the amount of twenty million dollars (\$20,000,000.00), its reasonable attorneys' fees, costs and disbursements incurred herein in view of Defendants' wrongful, inequitable, intentional, misleading and fraudulent conduct; and
- B. That the Defendants be Ordered by decree of this Court to disgorge to Plaintiffs all gains, profits, and advantages derived by its breaches of contract, breaches of fiduciary duty, fraud, misrepresentations, and other unlawful acts and failures to act as set forth in the above Complaint; and

C. That the Defendants be Ordered by decree of this Court to provide a full accounting for all sales, revenues, and profits related to any party or asset described in this complaint; and

D. Award Plaintiff punitive damages in view of Defendants' wrongful, intentional, fraudulent, and misleading conduct; and

E. Grant the Plaintiff such further relief as the Court deems just.

Respectfully submitted,

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6. This Complaint presents the fraud associated with Defendant Korber's scheme to create and file a fraudulent document with the U.S.P.T.O. Board of Appeals and Interferences in an interference proceeding seeking to invalidate the Plaintiffs' '084 Design Patent and related 29/253,938 ("'938 Application").

7. This Court has supplemental jurisdiction over state law and common law claims under 28 U.S.C. §1337(a).

8. This case contains claims originally filed on December 29, 2005 in the Circuit Court of Howard County, a Maryland state court, Case Number 13-C-05-064158, thus equitably tolling the statute of limitations for any applicable claims in this case, see Burnett v. New York Central Railroad Co., 380 U.S. 424 (1965); Shofer v. Hack Co., 970 F.2d 1316 (1992). Case Number 13-C-05-064158 was stayed by the state court as it involved and required resolution of federal issues, including intellectual property rights in related case MJG-05-3456.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1333(a) as an action where Marcia Stengel and Thomas White reside, and where the principal offices of the Plaintiffs and Defendant CBT Supply and the resident agent for Defendant CBT Supply are registered.

II. PARTIES

10. Plaintiff Technical Furniture Group, a Maryland Limited Liability Corporation with principal place of business at 10717 Faulkner Ridge Circle Columbia, Maryland, 21044, is the legal assignee of all patent rights formerly presented in MJG-06-3424 and related patent applications. Technical Furniture Group is co-owned by Smartdesks, Inc. and G.T. Brothers, Inc. and its CEO and President is Marcia Stengel.

11. Plaintiff Smartdesks, Inc., a Maryland corporation with principal place of business at 10717 Faulkner Ridge Circle Columbia, Maryland, 21044, is the legal assignee of all copyrights, trademarks, trade dress, and other intellectual property rights and assets formerly presented in case MJG-05-3456. Marcia Stengel is the CEO and President of Smartdesks, Inc.

12. Plaintiff Thomas White, a Maryland resident, owns G.T. Brothers, Inc., which has a factory located in Westminster, Maryland. G.T. Brothers is an owner of Technical Furniture. White has manufactured SMARTdesks computer furniture products as a subcontractor since 1998. He currently manufactures SMARTdesks for Smartdesks, Inc., an owner of Technical Furniture. White is an undisputed inventor of one or more patents addressed in this lawsuit and was a party to case MJG-06-3424 to correct inventorship of the '890 Patent. White's patent rights have been legally assigned to Technical Furniture Group.

13. Marcia Stengel is the widow and Personal Representative of Peter J. Stengel, deceased. Peter J. Stengel is an undisputed inventor of every patent addressed in this lawsuit. Peter J. Stengel asserted his exclusive ownership over the intellectual property addressed in case MJG-05-3456. Stengel's patent rights have been legally assigned to Technical Furniture Group and other intellectual property rights have been legally assigned to Smartdesks, Inc

14. Defendant CBT Supply, Inc. is a corporation registered in the state of Maryland. The Maryland State Department of Assessments and Taxation currently describes it in good standing. It has a principal address listing as 514 F. Progress Drive, Linthicum, MD

21090. CBT has a resident agent listed as The Corporation Trust Incorporated at 300 E. Lombard St., Baltimore, Maryland 21202.

15. Defendant Jeffrey Korber resides at 83 Jacobs Road, Rockaway, New Jersey 07866. Defendant Korber has a 49 percent ownership interest in Defendant CBT Supply, Inc., with the remaining 51 percent ownership interest by Lisa Kaslow, Defendant Korber's wife.

16. Defendants CBT Supply and Korber conduct continuous and systematic business activities within the State of Maryland, where the wrongs alleged herein occurred.

III. FACTS COMMON TO ALL COUNTS

A. INTELLECTUAL PROPERTY

The claims in this complaint specifically refer to the following intellectual property:

17. The term “‘890 Patent” shall refer to the invention disclosed in the following patent and applications:

- a. Provisional Patent Application 60/436,515 (“‘515 Provisional Application”), filed December 27, 2002, which lists Jeffrey Korber and Peter Stengel as co-inventors.
- b. Patent No. 7,047,890 (“‘890 Patent”) which issued May 23, 2006 from Application 10/616,461 (“‘461 Application”), filed July 9, 2003, which lists Jeffrey Korber, James Babcock and Peter Stengel as co-inventors. The ‘890 Patent discloses the product marketed as “FlipIt” by Jeffrey Korber and CBT Supply, Inc (“CBT Supply”) and as “Level” by SMARTdesks, Inc. (“SMARTdesks”).

c. U.S. Patent Application No. 11/351,421 (“‘421 Application”), filed February 10, 2006 lists Stengel and White as co-inventors and is a continuation of the ‘461 Application with identical claims and corrected inventorship.

18. The term “Retrofit” patent applications shall refer to the invention disclosed in the following patent applications:

- a. Patent Application No. 10/971,571 (“‘571 Application”), filed October 22, 2004, which lists Peter Stengel, Thomas White and Jeffery Korber as co-inventors and is a continuation-in-part of the ‘461 Application. The ‘571 application was abandoned on or about August 13, 2008.
- b. U.S. Application No. 11/353,833 (“‘833 Application”), filed February 14, 2006, lists Stengel and White as inventors and is a continuation of the ‘571 Application with claims that encompass the ‘571 application and corrected inventorship.

19. The “‘084 Design Patent” refers to the to the invention disclosed in the following patent and applications:

- a. U.S. Patent No. D541,084, which issued from Patent Application No. 29/217,868 (“‘868 Application”), filed on November 24, 2004, which lists Jeffrey Korber and Peter Stengel as inventors. The ‘084 Design Patent is currently in an interference proceeding with the ‘938 Application before the U.S.P.T.O. Board of Appeals and Interferences.
- b. U.S. Application No. 29/253,938 (“‘938 Application”), filed February 15, 2006, which lists Peter J. Stengel and Jasen Stengel as inventors and is a

continuation of the '868 Application with claims that encompass the '868 application and with corrected inventorship.

20. The term "intellectual property" if stated generally shall refer to any legal rights under either federal or state law to patents, inventions, copyrights, trademarks, trade names, trade dress or trade secrets.

21. The term Stengel's "trade secrets" shall be any legal rights to trade secrets as defined in either federal or state law, including intellectual property.

B. BACKGROUND

22. Peter J. Stengel came from a multi-generation family line of very successful entrepreneurs in the furniture industry, going back to Krebs Stengel, Inc., which sold furniture through Sears and Roebuck, J.C. Penny, and most major catalog and retail store companies. He left the family furniture business to begin his own, including in 1996 his foundation of the business he called SMARTdesks. Stengel had a successful career designing and marketing commercial and residential furniture for 40 years.

23. Peter Stengel involved his own family in his furniture business, including his son Jasen and wife Marcia. Jasen Stengel was involved at the creation of his SMARTdesks business in 1996 and worked closely with Peter over the years. Jasen Stengel is an inventor of other furniture related patents and is active in running the Technical Furniture Group and Smartdesks, Inc. businesses.

24. By January 18, 2002, Peter Stengel had created the concept for the invention that became the '890 Patent and was initially sold as the "FlipIt" mechanism beginning in 2003. In 2003, Stengel and White improved the initial concept and invented what became known as the "Retrofit."